

## **MOTION PRACTICE**

November 2014

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1. What is the purpose of your motion:
  - a. Strengthen your case
  - b. Exclude unfavorable evidence
  - c. Eliminate or handicap the defense's theory
  - d. Obtain relevant evidence
  - e. Set the parameters for the trial
  - f. Aid in plea negotiations
  - g. Minimize unpredictable rulings
2. Trial strategy: what are your goals?
  - a. Condense your theory to one statement
  - b. How to handle problematic evidence
  - c. How to strengthen your case in chief
3. When to file a pretrial motion?
  - a. Written motions:
    - i. Early motion give the judge the opportunity to research and carefully consider the motion
    - ii. Late motions force the judge to make quick decisions that rarely go in the State's favor
  - b. Oral motions:
    - i. Generally made during trial and thus force the judge into making a split-second decision, that frequently does not go in the State's favor
    - ii. Might consider waiting for strategic reasons, but run the risks of making an untimely motion
4. Common Pretrial Motion:
  - a. 404(b)
  - b. 404(c)
  - c. Notice of expert. Parties are required to provide the expert's:
    - i. Name, address, and CV
    - ii. Report
    - iii. A brief explanation of their proposed testimony
    - iv. That the expert is available to consult with opposing counsel upon reasonable notice
      - §77-18-13(6) can excuse the State's written notice if certain conditions are met
  - d. Motion to exclude expert witness
  - e. Motion to exclude or limit witness testimony under Rule 608 and/or 609

- f. Motions in limine:
    - i. Hearsay
    - ii. Self defense
  - g. Voir dire questions
  - h. Jury questionnaire
  - i. Special jury instructions
  - j. Reciprocal discovery
  - k. Pre-admit exhibits
5. Discoverable evidence through Rule 16:
- a. Appear in a lineup
  - b. Speak for identification
  - c. Submit to fingerprinting or the making of bodily impressions
  - d. Pose for photographs not involving reenactment of the crime
  - e. Try on articles of clothing or other items of disguise
  - f. Permit the taking of samples of blood, hair, fingernail scrapings, and other bodily materials which can be obtained without unreasonable intrusion
  - g. Provide specimens of handwriting
  - h. Submit to reasonable physical or medical inspections of his body
6. What more do you need to do after submitting the pretrial motion?
- a. Request to submit for decision under Rule 12(b)
  - b. The rules of civil procedure grant defense counsel at least 14 days to reply before filing a notice to submit
7. Would a trial brief be helpful or advantageous?
- a. What is a trial brief?
    - i. Summary of anticipate evidence
    - ii. Legal framework of admission of evidence
  - b. Anatomy of trial brief
    - i. Notice of contested evidence and anticipated objections
    - ii. Legal analysis and supporting case law
  - c. Objectives of trial brief
    - i. Assist court in making correct rulings
  - d. Byproducts of filing a trial brief
    - i. Building confidence in case
    - ii. Psyching out defense
    - iii. Encouraging guilty pleas